

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL ORLANDO, *and the other
stockholders of Fit Pay, Inc., with Michael
Orlando as Shareholder Representative,*

Plaintiffs,

-against-

NXT-ID INC., CROWDOUT CAPITAL,
LLC, and GARMIN INTERNATIONAL,
INC.,

Defendants.

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DOC #:
DATE FILED: 7/24/2020

20-cv-1604 (MKV)

ORDER

MARY KAY VYSKOCIL, United States District Judge:

On July 23, 2020, the Court held an Initial Pretrial Conference as well as a pre-motion conference in this matter. As the Court explained at the conference, the Court has a responsibility “to inquire as to subject matter jurisdiction and satisfy itself that such jurisdiction exists.” *Da Silva v. Kinsho Int’l Corp.*, 229 F.3d 358, 361-62 (2d Cir. 2000). For diversity purposes, the citizenship of an LLC depends on the citizenship of its members. *See Handelsman v. Bedford Village Assoc. Ltd. P’ship*, 213 F.3d 48, 51 (2d Cir. 2000). Accordingly, IT IS HEREBY ORDERED that, by July 30, 2020, Plaintiff shall file a Second Amended Complaint properly alleging diversity citizenship as to Defendant CrowdOut Capital LLC, or the Court will dismiss Plaintiff’s claims against CrowdOut Capital LLC for lack of subject matter jurisdiction. IT IS FURTHER ORDERED that, by July 30, 2020, the parties shall submit briefing on whether, for purposes of establishing diversity jurisdiction, the Court must consider the citizenships of the “other stockholders of Fit Pay, Inc.,” on whose behalf Plaintiff purports to bring this case as Shareholder Representative.

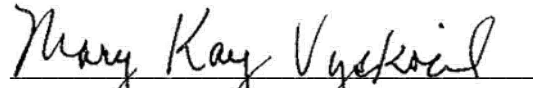
IT IS FURTHER ORDERED that, by August 7, 2020, all of the parties shall file a joint status letter and new Proposed Case Management Plan in accordance with the Court's Individual Rules of Practice in Civil Cases. IT IS FURTHER ORDERED that, in advance of filing the joint letter and Proposed Case Management Plan, all parties shall confer to discuss the possibility of settlement for at least one hour.

IT IS FURTHER ORDERED that, for the reasons explained at the conference, the Court deems made and denies without prejudice to renewal the motion of Defendant Nxt-ID to strike allegations in the First Amended Complaint, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure [ECF #39].

IT IS FURTHER ORDERED that Plaintiff shall file his contemplated motion to dismiss the counterclaims of Nxt-ID by August 13, 2020. Nxt-ID shall respond by September 3, 2020, and Plaintiff shall reply by September 17, 2020.

SO ORDERED.

Date: July 24, 2020
New York, NY


MARY KAY VYSKOČIL
United States District Judge